



How Do IDEA & FERPA Permit Data Sharing?

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Speakers

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Moderator

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Introductions

- Marion Crayton, Confidentiality Lead, Office of Special Education Programs
- Kala Shah Surprenant, Senior Counsel & IDEA Team Lead, Office of the General Counsel, U.S. Department of Education
- Frank Miller, Deputy Director, Student Privacy Policy Office,
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IDEA & FERPA – Privacy & Data Sharing

Participants will:

- Have an increased understanding of IDEA and FERPA as related to data privacy in IDEA Part B, Section 619 and Part C.
- Identify and obtain resources related to privacy and data sharing.

Navigating IDEA & FERPA – Agenda

- Overview of IDEA & FERPA Privacy
- IDEA & FERPA Cross-Walk (8/24/22)
- Common themes in IDEA and FERPA
- Scenarios highlighting differences
- Developing the data sharing agreement
- Q & A and Resources

Individuals with Disabilities Education Act (IDEA)

- IDEA provides parents of children referred to IDEA the right to:
 - access their children's records,
 - seek to have the records amended, and
 - consent to the disclosure of PII or personally identifiable information from records, except as provided by law.
- IDEA includes key protections under Parts B and C of the IDEA beyond FERPA.
- **When reading IDEA and FERPA together, always start with IDEA first.**
- IDEA Part B Privacy Provisions - 34 CFR 300.611 through 300.627 (last amended 2006).
- IDEA Part C Privacy Provisions - 34 CFR 303.401 through 303.417 (last amended 2011).



Family Educational Rights and Privacy Act (FERPA)

- FERPA provides parents and eligible students the right to:
 - have access to their children's education records,
 - seek to have the records amended, and
 - consent to the disclosure of PII or personally identifiable information from education records, except as provided by law.
- FERPA protects the personally identifiable information or PII in records of eligible students maintained by educational agencies and institutions.
- FERPA Privacy Provisions - 34 CFR Part 99 and 20 U.S.C. § 1232g.



Updated Resource



IDEA and FERPA Crosswalk

U.S. Department of Education

08/24/2022

Kala Shah Surprenant – Senior Counsel, Office of the General Counsel
Frank Miller - Deputy Director, Student Privacy Policy Office



Crosswalk – A side-by-side comparison of Parts C and B of the IDEA and FERPA

8 Key Areas

1. Applicability
2. Definitions
3. Confidentiality Provisions
4. Consent
5. Inspection, Review and Amendment of Records
6. Retention of Records
7. Notice to Parents
8. Complaint Process

Applicability – Key Differences

Who

- IDEA applies to “participating agencies” (Part C vs. Part B).
- FERPA applies to “educational agencies and institutions” that receive funds from the U.S. Department of Education.

When

- IDEA’s privacy provisions apply once child is referred to IDEA.
- FERPA applies to eligible students enrolled in school (preschool, K12, Higher education)

Definitions

- It is important to review the definitions under Parts B and C of the IDEA and FERPA because although conceptually there are similarities, there are also critical differences.
 - Education Record/Early Intervention Record
 - Personally identifiable information
 - Parent (FERPA vs. IDEA)
 - Child vs. Student
 - Participating agency (IDEA)
- **When reading IDEA and FERPA together, always start with IDEA first.**

Confidentiality Provisions

- IDEA Part B and Part C regulations are consistent with, and incorporate the privacy protections of, FERPA. 34 CFR 300.622 and 303.414
- IDEA Part B and Part C regulations have extra exceptions
- IDEA Part B and Part C have extra protections beyond FERPA.
- When analyzing the privacy requirements for children with disabilities, it is critical to review the IDEA requirements before reading FERPA.



Consent

- Consent means obtaining prior written parental consent before the disclosure of PII from records
- The consent must specify the record(s) that may be disclosed, the purpose and the parties receiving the records.
- Consent under Parts B and C of the IDEA must be informed.
- Consent under Parts B and C of the IDEA and the definition of consent applies to other areas of IDEA (e.g. service provision, use of insurance, etc.).

Inspection, Review and Amendment of Records

- Parts B and C of the IDEA and FERPA all provide parents the right to:
 - Inspect and review records.
 - Copies of records
 - Request the amendment of records that are inaccurate, misleading, or violates the student’s privacy.
 - Request, aside from substantive decisions, a hearing relating to those amendment requests and the ability to submit an explanation or statement where the hearing does not result in the requested amendment.



Retention of Records

- Record retention and destruction of records.
- All three have record keeping requirements in terms of requests for access/disclosures and limitations on records related to multiple students.
- Part C and B of IDEA have safeguarding provisions for the designation of a specific individual responsible for ensuring the confidentiality of personally identifiable information.



Notice to Parents

- Parts B and C of IDEA and FERPA all require regular notice of privacy rights to be provided to parents.
- However, the content of the notice is much more comprehensive under IDEA and there are many different kinds of notices and when they must be provided.

Complaint Process

- IDEA and FERPA require some form of dispute resolution or complaint process.
- Dispute resolution under IDEA provides parents with three options-
 - State complaints ;
 - Mediation at [34 CFR § 300.506](#) and [34 CFR § 303.431](#); and
 - Due process hearing requests at [34 CFR §§ 300.507 through 300.518](#) and [34 CFR § 303.430](#).
- IDEA's complaint process focuses on the role of the State agency while FERPA permits complaints to be filed at the federal level with the Student Privacy Policy Office within the U.S. Department of Education. See <https://studentprivacy.ed.gov/file-a-complaint>.



Crosswalk – A side-by-side comparison of Parts C and B of the IDEA and FERPA

Comparison of Parts C and B of IDEA and FERPA

- Scenario 1 - Referral & Consent
- Scenario 2 - Early Childhood Transition
- Scenario 3 - Consent under IDEA & FERPA
- Scenario 4 - Definition of Parent (USA Amendment)
- Scenario 5 - Use of Technology
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Scenario 1 – Referral & Consent



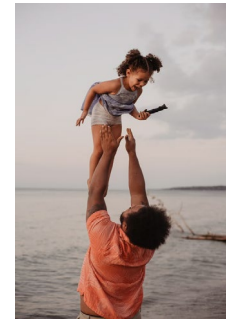
- Primary referral sources, such as EHDI programs, physicians, and other primary referral sources, are interested in receiving follow-up information when they refer a child to the IDEA Part C program.
- What information can be shared with referral sources (e.g. the IDEA program has not able to make contact with the child's parent or whether the child is determined eligible)?
- Is the answer different under Part B of the IDEA when a child is referred to either Part B or Section 619 preschool services?

Scenario 2 – Early Childhood Transition – Participating Agency & Consent



- A child is approaching age three and the Part C system is ready to conduct the Transition Notification to the state educational agency (SEA) and the local educational agency (LEA) (child's name, the parent's name and contact information). What else can Part C provide to the LEA?
- The LEA requests the service coordinator send the IFSP and any current evaluations to them to expedite the evaluation process. Can this be done without parental consent?
- What parent consent must be obtained if the service coordinator is invited to the initial IEP meeting or if other individuals show up?

Scenario 3 – Definition of Parent



- Two parents are divorced, and the mother has physical custody of the children, one child has an IFSP and is served by the local early intervention service provider under IDEA Part C and the other has an IEP and is served by the IDEA Part B program in the local school district.
- The father asks for access to his children's education records. Knowing that the father does not live with his children, the IDEA programs deny the request. Is that consistent with IDEA and FERPA?
- These scenarios are involved and please contact the OSEP content lead who will bring in OGC and SPPO as appropriate.

Scenario 4 – Definition of Parent & USA Amendment to FERPA & IDEA

- A child is referred to the IDEA Part C program from the child welfare agency. The child is placed in foster care and living with foster parents. The child's biological parents decline to consent to disclose information back to the child welfare agency.
- How can the IDEA communicate with the child welfare agency?
- See Qs 19 – 23 of May 2014 ED Guidance at--
https://studentprivacy.ed.gov/sites/default/files/resource_document/file/uninterrupted-scholars-act-guidance.pdf.



Scenario 5 – Use of Technology



- IDEA (B&C) programs want to use email to communicate with parents.
- How can they use email?
- Some IDEA programs are considering contracting with a third party (e.g. apps, child outcomes tool, or Education technology) to enhance the provision of IDEA or educational services. How can the IDEA programs use this technology consistently with IDEA & FERPA requirements?

Scenario 5 – Use of Technology: Relevant Resources

- ED Tech Resources
- Protecting Student Privacy While Using Educational Resources - <https://studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-requirements-and-best>
- Model Terms of Service - <https://studentprivacy.ed.gov/resources/protecting-student-privacy-while-using-online-educational-services-model-terms-service>



Scenario 6 – Data Sharing: Consent and Audit/Evaluation Exception

- A State health agency is working with the CDC on -- (1) an EHDI project; or (2) the registry on children with autism. The agency has reached out to the IDEA Part C State lead agency (which is the SEA) requesting data on the Part C children to evaluate how the program improves outcomes for children served under IDEA.
- A researcher from the local university is requesting child-level data on IDEA children with a disability. The researcher would like to link these data with data from the state education agency on child performance in KG-3rd grade.
- How can the IDEA program share these data? Can the IDEA program use parent consent or the studies and/or audit/evaluation exception to share these data?



Scenario 6 – Data Sharing: Relevant Resources

<https://studentprivacy.ed.gov/resources/written-agreement-checklist>

<https://studentprivacy.ed.gov/resources/guidance-reasonable-methods-and-written-agreements>

<https://studentprivacy.ed.gov/resources/checklist-mapping-data-flows>

<https://dasycenter.org/data-sharing-agreement-checklist-for-idea-part-c-and-part-b-619-agencies-and-programs-2/>



Resources on IDEA/FERPA Privacy

- IDEA/FERPA Crosswalk – <https://studentprivacy.ed.gov/resources/ferpaidea-cross-walk>
- Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs FAQs Oct. 2016 – https://studentprivacy.ed.gov/sites/default/files/resource_document/file/idea-confidentiality-requirements-faq_0.pdf
- FERPA 101 Training Modules - <https://studentprivacy.ed.gov/training/ferpa-101-local-education-agencies>
- Student Privacy Newsletter - <https://studentprivacy.ed.gov/subscribe-student-privacy-newsletter>



Resources on IDEA/FERPA Privacy

- IDEA/FERPA Crosswalk – <https://studentprivacy.ed.gov/resources/ferpaidea-cross-walk>
- Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs FAQs Oct. 2016 – https://studentprivacy.ed.gov/sites/default/files/resource_document/file/idea-confidentiality-requirements-faq_0.pdf
- FERPA 101 Training Modules - <https://studentprivacy.ed.gov/training/ferpa-101-local-education-agencies>
- Student Privacy Newsletter - <https://studentprivacy.ed.gov/subscribe-student-privacy-newsletter>



Time for Q and A Discussion

- When reviewing a privacy Q, read IDEA & FERPA together, always start with IDEA first.
- Thank you.

